IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11852 of 2002
with
CIVIL APPLICATION No 6080 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRIKANT VAIDYA

Versus

PROPRIETOR OF M/S.MOHAN DYECHEM INDUSTRIES

Appearance:

1. Special Civil Application No. 11852 of 2002

MR MTM HAKIM for Petitioner No. 1

MR NK MAJMUDAR for Respondent No. 1

NOTICE UNSERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 31/08/2004

ORAL JUDGEMENT

1. Rule. Mr.N. K. Majmudar, learned advocate waives service of rule, for the respondent No.1.

2. The present petition has been preferred against

the order dated 24th September, 2002 passed below Ex.13 by the 4th Joint Civil Judge (S.D.), Vadodara in Special Summary Suit No.670 of 2001.

3. The present petitioner is the original defendant No.2 in Special Summary Suit No.670 of 2001. The respondent No.1 (original plaintiff) had preferred Special Summary Suit No.670 of 2001 on the basis of cheque issued by the respondent No.3 and the same was dishonoured. Learned advocate for the petitioner (original defendant No.2) has submitted that the present petitioner (original defendant No.2) has nothing to do with the respondent No.2 (original defendant No.1). The respondent No.2 is not a partnership - Firm in which the present petitioner is a partner nor at any point of time, the petitioner was a partner with respondent No.2. The learned advocate for the petitioner has mainly submitted that the cheque was never issued by the present petitioner, on the contrary it was issued by original defendant No.3 Shri Sanjiv Manubhai Desai in his personal capacity. The dishonour of cheque was never of a partnership firm and even if it is so, the present petitioner is never a partner with respondent No.2 (original defendant No.1) and hence, the order passed by the trial Court is required to be quashed and set aside.

4. Learned advocate for the respondent No.1 (original plaintiff) has mainly submitted that there was a partnership firm namely M/s.J.M.Dyechem in which the present petitioner as well as original defendant No.3 are the partners and the cheque was issued by Shri Sanjiv Manubhai Desai not in his personal capacity but as partner of a partnership firm in which the present petitioner (original defendant No.2) was a partner and, therefore, for dishonour of cheque issued by one of the partners, the present petitioner is liable for the payment. It is contended by the learned advocate for the respondent No.1 that the criminal case was also filed being Criminal Case No.3282 of 1998 against M/s.J.M.Dyechem in which the present petitioner had given assurance to the Court that the amount of cheque was paid by the present petitioner (Annexure-A to the Affidavit-in-reply) vide purshish dated 3rd July, 1999. The said cheque amount is for Rs.36,150/-. The learned advocate for the respondent No.1 has also submitted that because of another cheque, criminal complaint was filed in which also, the petitioner was a co-accused. The J.M.F.C., Vadodara has passed an order dated 25th November, 1998 whereby the present petitioner has been discharged from another criminal case being Criminal Case No.4076 of 1998 and, therefore, looking to the Annexure-A

to the memo of petition, the present petitioner is a partner in the respondent No.2 - Firm and hence, the order passed by the trial Court is true and correct and this Court should not interfere with the said order.

5. I have perused the case papers and the order passed by the trial Court. The present petitioner has, from the very beginning, raised the contention that there is nothing like a partnership of respondent No.2 (original defendant No.1) and, therefore, no question of being a partner thereto by the present petitioner whatsoever arises. It is also clear-cut averment that the present petitioner is not at all a partner in the original defendant No.1 - firm. There is no an iota of an evidence, so far as the partnership firm is concerned, the cheque has not been issued by Shri Sanjiv Manubhai Desai in the capacity of partner of M/s.J.M. Dyechem. The cheque appears to have been issued in his personal capacity. Even the complaint against the present petitioner in Criminal Case No.4076 of 1998 has been replied by the present petitioner and looking to the reply, the learned Judge of the trial Court vide its order dated 25th November, 1998 discharged the present petitioner from the complaint filed by the respondent No.1 (original plaintiff). The aforesaid aspect has not been appreciated by the learned Judge of the trial Court. Thus there is an error apparent on the face of the record, while passing the order by the learned Judge of the trial Court. Therefore, the order passed by the learned Judge of the trial Court dated 25th September, 2004 below Ex.13 in Criminal Case No.670 of 2001 is hereby quashed and set aside. There is no basis of the suit as to the facts and circumstances of the partnership firm worth the name. Neither the same has been produced before this Court.

6. In view of the aforesaid facts and circumstances of the case, this petition is allowed. Rule made absolute to the aforesaid extent.

In view of the order passed in the main petition, Civil Application No.6080 of 2003 does not survive and hence, the same is disposed of accordingly.

[D. N. Patel,J.]
(vijay)